

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: Chabad House at Amherst

Date application filed with the Town Clerk: December 23, 2008

Nature of request: Special Permit to extend, for six (6) months, Special Permit ZBA FY 2006-00035 under Section 10.33 of Zoning Bylaw.

Address: 30 North Hadley Road (Map 11A, Parcel 13, R-G Zone)

Legal notice: Published on January 26 and February 2, 2009 in the Daily Hampshire Gazette and sent to abutters on January 23, 2009.

Board members: Thomas Simpson, Barbara Ford, Hilda Greenbaum

Submissions: The petitioner submitted a packet of information with the application including:

- One (1) copy of the ZBA application filed with the Town Clerk, December 23, 2008;
- One (1) copy of the Special Permit ZBA FY2006-00035;
- One (1) copy of a letter from the applicant, dated December 17, 2008;
- One (1) copy of the Site Plan approved by the ZBA on January 11, 2007;
- One (1) copy of the Floor Plan approved by the ZBA on January 11, 2007;
- One (1) copy of the Management Plan approved by the ZBA on January 11, 2007;
- One (1) copy of the Activity Grid approved by the ZBA on January 11, 2007;
- One (1) copy of the email correspondence from Town Counsel dated December 20, 2008, submitted by staff;
- One (1) copy of the project review by the Fire Department, dated January 16, 2009, submitted by staff;
- One (1) copy of the project review by the Board of Health, dated February 3, 2009, submitted by staff.

Site Visit: February 9, 2009

Thomas Simpson, Barbara Ford and Hilda Greenbaum met with the project manager, Richard Todrin, at the site and observed the following:

- The older brick structure and newer attached addition located on a corner lot adjacent to North Hadley Road and McClure Street and in close proximity to University Parking Lot #32;
- Driveway and walkways partially cleared of snow and ice;
- Five (5) vehicles parked on the property and adjacent to McClure Street;
- A large, full dumpster, situated on the property and immediately in front of the garage;
- The rear yard, partially covered in snow with some toys and other items visible;
- The first floor kitchen with new tiled flooring and electrical upgrades;
- A new fire panel located at the first floor front door;
- The existing first floor office;
- The four bedrooms located on the second floor;

- The two bedrooms and partial bathroom located on the third floor;
- The library located in the basement;
- The former kitchen and a bathroom in the basement to be converted to storage use;
- The proposed daycare space located in the basement of the new building;
- The ritual bath, Mikvah, and attached bathrooms with locking doors in the basement of the new building.

Public Hearing: February 10, 2009

The application was presented by the project manager, Richard Todrin. He presented the following information related to the application:

- The Rabbi could not attend the Hearing due to an emergency with a family within the community;
- The Chabad House is requesting the extension of the Special Permit which was issued in January of 2007;
- There have been a series of events that have happened that prevented the project from moving forward;
- He has been on the job since December 9 and will continue to be on the job until the Board of Health, Building Inspections and Fire Department issues are resolved, and if the permit extension is granted, until a time when the project is completed;
- He feels that if the permit extension is granted, the project would be completed prior to the end of the six months;
- The Chabad House has changed; it is cleaner, neater, and safer and the uses as originally approved have not changed from what was previously approved.
- The applicant is not asking for any deviations and wants to go ahead with what was agreed to and will do so in accordance with all the requirements of the previous permit and all other Town and State regulations;
- The applicant asked that the Board grant the extension to allow the Chabad House to proceed as soon as possible;
- The funding for the project is now in place and the Chabad House is now in the position to go forward;
- Some issues remain to be worked out with the Fire Department and Building Inspection, such as the fire separation or sprinkler requirements in the building.

Mr. Simpson confirmed that Mr. Todrin had been employed by the Chabad House since December 9, 2008 and stated that the previous permit requires an on-site manager. He asked if Mr. Todrin was going to live on-site. Mr. Todrin replied that he will not be living on site, but he is currently the project manager.

Mr. Simpson stated that the permit took effect in January of 2007 and that it took 2 years for the Chabad House to engage a property/project manager. Mr. Todrin stated that it was difficult for a community organization, whose funding is based on contributions, to accomplish the requirements of the previous permit. He added that they have made other arrangements to secure the funding to complete the entire project.

Mr. Simpson asked when the work seen at the site visit had been completed. Mr. Todrin replied that all of that work had been done since he began on December 9, 2008.

Mr. Simpson asked Mr. Todrin to provide the Board with information regarding the Condemnation Order. Mr. Todrin stated the following:

- They are asking for the extension in order to continue to implement all aspects of the permit;
- A Condemnation occurred approximately at Thanksgiving;

- He was brought in, on or around, December 9th to interface with the Town to identify what needed to be done to lift the Condemnation;
- He was then asked by the Rabbi to stay on as the project manager;
- They began by cleaning up portions of the interior and exterior, including the filling of two dumpsters, removing snow from the property and making the rental units and the kitchen safe and clean and habitable;
- The final cleaning of the interior is being saved until the construction is completed;
- Safety devices including a new fire system were installed. The improvements to the fire safety system were upgraded and included upgrades to meet the needs of the proposed daycare facility.
- The electrical system was upgraded to meet current Code requirements;
- The plumbing was inspected and a bathroom and two kitchens in the basement were removed. Those rooms will now be used for storage;
- Most of the completed improvements are more than required in order to incorporate the proposed daycare school requirements.

Mr. Simpson asked what remains to be done in order to accomplish the permitted improvements and the schedule for completing those improvements. Mr. Todrin stated that the first course of action is to determine what will be done with the fire separation. He added that they are currently working with Town officials to determine which will be the most cost effective method to proceed. He added that simultaneously they will be receiving estimates for the rest of the improvements. The expected timeframe is to have the project completed prior to the end of the six-month extension. He stated that the extension would allow them to complete the project in time for the school session that begins in September.

Mr. Simpson stated that from a zoning perspective, the permit requires that the playground area in the backyard be fenced. Mr. Todrin stated that the playground area has been cleaned and that they intend to erect a fence as soon as the snow melts.

Ms. Ford asked if they have already started work on the outside area. Mr. Todrin replied that they had already begun to clean the backyard area.

Ms. Greenbaum asked if the Board made any specific requirements about the type of fence to be installed. Mr. Simpson replied that they had not made any specific conditions regarding the fence and noted that he believed that the Building Inspections and the State have requirements for fencing associated with the daycare use.

Ms. Ford asked if they had received the required licenses for the daycare facility. Mr. Todrin replied that they had not yet received licenses from the State for the daycare use and that the Rabbi's wife will be the principal teacher. Building Commissioner Weeks stated that the State typically requires the Town inspections and approval to be completed first. She added that the State will most likely not approve the use until after the Town has reviewed any and all applicable Code issues.

Ms. Greenbaum and Ms. Ford asked what would happen if the State reviewed the facility and required changes. Ms. Weeks stated that for this number of children, the State will not certify the facility until after the Town review is complete and that if changes were required, the applicant would have to comply with the State.

Mr. Simpson noted some of the other conditions, including parking for six (6) vehicles, with wheel stops and the garage is allowed to be used as only one (1) space.

Mr. Todrin replied that he is aware of the parking requirements and that the dumpster is temporary and will continue to be used in order to clean out the garage. He added that the parking stops would be installed and that the applicant will continue to implement the other requirements. The major requirement that had been asked for and that has been completed is the hiring of a property manager to begin resolving issues and completing the permit requirements.

Ms. Ford asked the applicant if he had experience as a project manager and if he will be staying on long term. Mr. Todrin stated that he has been involved in property management for about 30 years. He added that he will certainly be involved with the Chabad House until the end of the project and may stay longer if the Chabad House asks him to stay.

Mr. Simpson asked if Mr. Todrin was under contract. Mr. Todrin replied that he has been verbally contracted by the Chabad House, not written.

Ms. Greenbaum stated that this professional property manager arrangement seems to be a better arrangement than a resident acting as manager.

Ms. Ford confirmed that the contract is until the completion of the work to bring the property up to Code and to implement the permitted uses. Mr. Todrin replied that this is correct.

Mr. Todrin noted that the requirement to have an on-site property manager was part of the original permit and is probably necessary. He added that he will be involved until which time the Chabad House is running smoothly and then it would be up to the Rabbi to engage a resident property manager.

Assistant Chief Michael Zlogar was present and stated the following:

- Over the past two (2) years the project has laid somewhat dormant due to issues with contractors;
- It took the events of November to get the project moving and there has been substantial progress toward addressing all the issues raised during the previous permit process;
- He is confident that everything required would be completed;
- He credited Mr. Todrin in making efforts to get all the work done, including measures in excess of what is required;
- He feels that it would be beneficial to allow the extension of the permit in order to complete the project and have a facility that is up to code for the approved uses;
- Even though it has taken two years to get started, there has been substantial progress in the last two months; the Department is satisfied.

Mr. Simpson asked what percentage of the project is complete. Mr. Zlogar stated that they have been focusing on the old part of the building and now have a written commitment to complete the fire protection systems for the entire building. Instead of trying to repair the fire protection system, the entire system was replaced and upgraded to incorporate the requirements of the daycare facility. They have added hard-wired detection and upgraded the kitchen to meet commercial kitchen requirements. The fire alarm system will be upgraded throughout the new area of the building.

Ms. Weeks and Mr. Zlogar stated that they are probably 1/3 complete. Mr. Zlogar stated that the following has been completed for life safety requirements:

- The fire alarm system was replaced;
- Additional detection was added so that the building is protected to the same level required for dormitories;

- All the fire extinguishers have been upgraded and Carbon Monoxide detectors have been installed;
- He added that there are commitments to continuing the upgrade of the new section; including fire separation between the residential, assembly and daycare uses.

Ms Greenbaum asked if the State required a sprinkler system for the school use. Mr. Zlogar stated that the sprinkler issue was originally discussed in connection with lodging or boarding house use and that the uses are now below the threshold where sprinklers would be required. He added that the fire protection system is part of the written agreement between the Chabad House and the Fire Department and the Chabad House could utilize a sprinkler system or firewall protection, which ever may be more cost effective.

Ms. Ford asked if wiring the fire alarm system in the apartments is required by Code. Mr. Zlogar replied that the school use would require a fire alarm system and that depending on the firewall separation issue; it could have been just that space. He added that the resolution on the table includes a commitment to do the entire building with a fire alarm system which would protect the apartments, rental rooms, single family use, assembly and education uses, and is more than what is required.

Ms. Ford asked if the sixth edition of the Building Code is the current Code? Ms. Weeks stated that there are two codes running concurrently, the sixth and seventh edition. She added that the approved plans were designed in accordance with the requirements of the sixth edition and that the applicant is seeking to meet all the requirements of the sixth edition.

Ms. Greenbaum asked about the schedule with the State regarding the inspection of school facilities. Ms. Weeks stated that she believes that they do individual inspections and that she has experienced the State conducting inspections when a job is completed and after the Town has completed their inspections when a school is new.

Ms. Weeks stated that they have reached an agreement with Mr. Todrin and is more confident that the project will move forward and will be done in compliance with the Code requirements and the Special Permit conditions.

Ms. Greenbaum asked if the floors would be sanded and re-finished. Mr. Todrin stated that he would like to, however, he is not sure if the cost of that could be included in the completion of this portion of the project.

In the context of the comments from the Health Department allowing three (3) bedrooms, Ms. Greenbaum asked for clarification regarding the maximum number of unrelated people allowed in a residential unit. Ms. Weeks explained that the guidelines and requirements are specific to the Health Department, Fire Department and Building Inspections. In accordance with the Zoning Bylaw, the maximum number of unrelated people shall be four (4) as required in Section 12.14.

Mr. Simpson noted that any other restrictions on the number of people in each unit are based upon the Code requirements of other Departments. Mr. Simpson asked if the use of any of rooms are changing from what was approved in the previous plans. Mr. Todrin reviewed the floor plans with the Board. He stated that the bathroom and kitchen in the basement are to be used as storage.

Mr. Simpson asked about the number of bedrooms on the second floor. Mr. Todrin explained the original Special Permit approved four bedrooms. However, because the sole access to one of those bedrooms is through another bedroom, it does not meet the access requirements of the other Departments. Mr. Todrin added that they would like to maintain four (4) bedrooms on the second floor as stated in the previous permit if they can meet the other Departmental requirements for access.

If they cannot meet those requirements, the number of bedrooms would be reduced to three (3) and be less than what was approved in the Special Permit.

Ms. Greenbaum made a motion to close the evidentiary portion of the Public Hearing. Ms. Ford seconded the motion. The Board voted unanimously to close the Public Hearing.

Public Meeting:

Mr. Simpson explained the options before the Board:

- To extend the permit for good cause;
- Deny the application for extension, which would result in the expiration of the permit and require filing of a new application; or
- Decide that the applicant has made significant progress toward the execution of the existing permit in which case they do not need an extension.

The Board discussed the differences between granting a renewal versus an extension. Ms. Weeks added that an extension involves no changes, or those that are minor or *de minimus*, and show the ability to abide by the conditions of the original permit. In an extension, the Board must base the decision on whether the applicant provided good cause and determine that any changes are minor enough that they do not change the purpose and intent of the original permit. A renewal of the permit allows the Board more flexibility in determining whether or not to grant a renewal.

The Board concluded that the applicant is now more likely to progress with a six month deadline and that the changes to the use of the rooms in the basement are *de minimus*. The Board agreed to amend the submitted plans to show the change in use of the bathroom and kitchen to storage.

The Board discussed placing a condition on the extension requiring the Chabad House to maintain Mr. Todrin as the project manager until such time the project is completed. The Board determined that if for whatever reason, Mr. Todrin is no longer employed by the Chabad House prior to the completion of the project the permit would expire. The applicant or Mr. Todrin would be required to notify the Building Commissioner and the Zoning Board of Appeals if he is no longer acting as the project manager.

The Board determined that this new condition will be in addition to all other conditions listed in the previous permit, including Condition 24 which requires the establishment of an on-site resident manager. Ms. Weeks indicated that the applicant could come back during a separate Public Hearing to revise this condition.

Findings:

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings, required of all Special Permits, that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood in which it is proposed and is compatible with existing uses and other uses in the district. The extension of the permit will allow the project to be completed and will allow for clearer management and enforcement. The uses, including residential, religious and educational are compatible with the neighborhood which includes multi-family residences, and is in close proximity to the University of Massachusetts campus.

10.382, 10.383 and 10.385 – The proposal will not constitute a nuisance due to air pollution, lights or visually offensive structures; will not be a substantial inconvenience or hazard to abutters; and reasonably protects adjoining premises. The conditions on the extension of the Special Permit limit parking, require the erection of a fence around the perimeter of the yard, and require the upgrade of the life safety devices in the existing buildings and establish clearer management and enforcement of the multiple uses on the property.

10.384 and 10.387 - Adequate and appropriate facilities will be provided for the proper operation of the use and will provide convenient and safe movement. The extension of the permit allows for the implementation of the approved uses. The permit provides clearer management and enforcement of the uses and establishes occupancy limits for the residential uses, religious uses and on-site parking. Additional safety measures are also provided including a fence around the rear yard used for the daycare and applicable fire and health standards will be implemented as part of this permit extension.

10.386 - The permit ensures that it conforms with the Parking and Sign regulations (Articles 7 and 8, respectively) of this Bylaw. The extension of the permit allows enforcement of the approved parking plan for the property and two additional spaces in the adjacent University parking lot. The signage on the building is in accordance with Article 8 of the Zoning Bylaw.

10.389 - The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables, and other wastes resulting from the uses permitted or permissible on the site, and methods of drainage for surface water. The extension of the permit maintains the conditions of the previous permit which require that all trash and recyclables shall be stored in a shed and shall be removed weekly. Additionally, the permit requires that the entire rear yard be kept free of litter at all times, especially in connection with the daycare facility.

10.393 -The proposal provides protection of adjacent properties by minimizing the intrusion of lighting because all external lighting is required to be downcast.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw. The extension of the permit promotes the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst and occupants of the building by upgraded life safety equipment on-site, regulates on-site parking, establishes clearer management and enforcement of the approved multiple use on-site and allows the Chabad House to better serve the community.

Public Meeting - Zoning Board Decision:

Mr. Simpson made a motion to APPROVE the amendments to the floor plan to reflect the removal of the bathroom and kitchen to become storage areas. Ms. Greenbaum seconded the motion.

Mr. Simpson made a motion to APPROVE the request for extension with a condition that Mr. Todrin remain the project manager responsible for the completion of the work associated with this extension and that the permit extension will expire if the Zoning Board of Appeals is notified by the Building Commissioner of any changes to Mr. Todrin's status as project manager. The extension would contain the same conditions listed in the previous Special Permit, except for amended and approved plans. Ms. Greenbaum seconded the motion.

For all the reasons above, the Board VOTED unanimously to grant a Special Permit for a six (6) month extension of Special Permit ZBA FY2006-00035, as applied for by The Chabad House at Amherst, at 30 North Hadley Road (Map 11A, Parcel 30, R-G Zone), with conditions.

THOMAS SIMPSON

BARBARA FORD

HILDA GREENBAUM

FILED THIS _____ day of _____, 2009 at _____,
in the office of the Amherst Town Clerk _____.
TWENTY-DAY APPEAL period expires, _____ 2009.
NOTICE OF DECISION mailed this _____ day of _____, 2009
to the attached list of addresses by _____, for the Board.
NOTICE OF PERMIT or Variance filed this _____ day of _____, 2009,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit for a six (6) month extension of Special Permit ZBA FY2006-00035, under Section 10.33 of the Zoning Bylaw. The six (6) month extension shall expire if Richard Todrin is no longer the project manager responsible for completion of work associated with this extension and with the amendments as shown on the approved floor plan, as applied for by The Chabad House at Amherst, at 30 North Hadley Road (Map 11A, Parcel 13, R-G Zone) and subject to the conditions of the previous permit, as follows.

1. All residents shall be associated with the religious life of the Chabad House – religious services, events and/or classes.
2. The building shall be limited to three dwelling units only.
3. All spaces in the three dwelling units shall be used only as shown on the floor plan stamped approved by the Zoning Board of Appeals dated February 10, 2009. No additional or accessory uses shall occur without the approval of the Board under an amendment to this permit.
4. Each of the residential units shall be occupied by no more than four unrelated individuals. No basement rooms shall be used as bedrooms.
5. Only the rooms labeled as bedrooms on the submitted floor plan drawn by Kuhn Riddle Architects, dated 6/13/06 and stamped approved by the Zoning Board of Appeals dated February 10, 2009 shall be used as bedrooms.
6. The daycare facility shall be located in the basement of that section of the building built in 1996.
7. The playground area for the daycare operation shall be located in the back yard and shall be fenced.
8. The *mikva* area shall not be accessible from the daycare room located in the basement of the newer section. The doorway between the two spaces shall be alarmed and locked during the daycare facility's hours of operation.
9. The assembly room located on the first floor of the original house shall be the principal location for religious services, community meals and educational classes.
10. Occupancy of the assembly room shall not exceed 37 people for services with chairs, or 72 people for functions without chairs.
11. The Activity Grid shall be incorporated as part of the Management Plan for the Chabad House.
12. The duration of overnight guests shall be no longer than 8 days.
13. Parking on site shall not exceed six vehicles – one space in the garage and five spaces in the parking area outside the garage.
14. Wheel stops shall be installed for the five parking spaces in the parking area.
15. Two additional parking spaces shall be obtained each semester for lot 32 from the University of Massachusetts or from the Town of Amherst in any public permit parking system the Town may develop for this area in the future.
16. The area along McClure Street and in the front of the house that is not part of the parking area shall be loamed, seeded, fertilized, watered, and appropriately fenced-off until grass is well established.
17. The three street trees approved by the Amherst Tree Warden for planting along McClure Street shall be planted as shown on the submitted site plan. The tree species shall be chosen from the list of recommended street trees from the Town's Landscape Guidelines and approved by the Tree Warden.
18. All landscaping shall be continuously maintained.

19. There shall be no parking on the property other than in the garage and designated parking area.
20. The succahmobile shall be removed from the property, and the back yard shall be kept free from litter at all times.
21. All trash and recyclables shall be stored in the shed only, shall be removed at least once per week, and the shed shall be cleaned on a regular basis.
22. There shall be a resident property manager other than the chief rabbi (currently Rabbi Adelman) whose name and telephone number shall be submitted to the Board and to the Inspection Services, Health Department and Fire Department for emergency contacts.
23. All external lighting shall be downcast.
24. Any changes in signage shall be submitted to the Board for review at a public meeting.
25. The petitioner shall submit inspection reports from Inspection Services, Health and Fire Department that shall be reviewed by the Board at a public meeting every three years.
26. Any changes in management of the house shall be submitted to the Board for review at a public meeting.
27. This permit shall expire upon any change of use on the property, either within the operation of Chabad House, or from Chabad House to a different use or institution.

Thomas Simpson, Chair
Amherst Zoning Board of Appeals

DATE